No. 80-1298

In the Supreme Court of the United States

OCTOBER TERM, 1980

GEORGE GILMER AND JAMES JACKSON, PETITIONERS

v.

TRUCK DRIVERS, OIL DRIVERS, FILLING STATION AND PLATFORM WORKERS UNION, LOCAL 705, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA AND THE NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

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1. Petitioners Gilmer and Jackson were employed by Respondent Union as business representatives. On April 4, 1977, during a monthly meeting of the Union's area stewards, officers and business representatives held to discuss the ongoing administration of the contract shops, Jackson and Gilmer complained about the low pay received by the Union's own staff employees. Louis Peick, the Union's executive officer, replied that this was neither the time nor place to discuss staff wages and instructed the two men to appear in his office the next morning (Pet. App. A-12 to A-13). Petitioners reported to Peick's office as instructed and were told they would get a raise when they earned it (Pet. App. A-3).

On April 11, prior to reporting for work, Jackson and Gilmer drafted, signed and made copies of a letter to Peick and the Union's executive board reiterating their wage complaints and expressing their desire to meet with the full executive board to discuss the matter as soon as possible. When they arrived at work, petitioners were told to attend that same day a community political luncheon honoring the Mayor of Chicago. During the luncheon, petitioners personally handed a copy of their letter to three or four of the Union's executive board members who were seated at various tables (Pet. App. A-13 to A-14).

Following the luncheon, the executive board convened and recommended that Peick discharge both men. One executive board member testified at the hearing before the Board's Administrative Law Judge that this recommendation was based upon petitioners' job performance, the "disturbance" created by their wage complaints at the April 4 meeting, and the "embarrassment" they caused the Union by handing out copies of their April 11 letter to the executive board members at the community luncheon. Peick called petitioners into his office that same afternoon and advised them they were being discharged for insubordination (Pet. App. A-14).

The Administrative Law Judge, whose decision was upheld by the Board, found that the "precipitating reason" for the discharges was petitioners' distribution of the letter at the Mayor's luncheon, and that "both this incident and * * * Jackson's salary complaints at the stewards meeting contributed substantially to Peick's decision to fire Jackson and Gilmer" (Pet. App. A-15). The ALJ found that "but for" these activities, the Union would not have fired petitioners (*ibid.*). Rejecting the Union's contention that petitioners' activities were unprotected because petitioners chose "inappropriate" occasions to air their complaints, the ALJ found "no reasonable basis in the circumstances for

withholding the normal protections accorded such activity" (Pet. App. A-16).

2. The court of appeals denied enforcement of the Board's order, concluding that the "dismissals were justified and not in retaliation for protected activity" (Pet. App. A-7). In reaching that conclusion, the court stated (Pet. App. A-6; footnote omitted):

> That employees are protected while presenting wage complaints does not give them carte blanche in choosing the method of presentation, or in their choice of time and place for making those complaints. Gilmer and Jackson had been employed by the Union for 14 and 8 years, respectively. They were fully informed of the established procedure to follow in seeking wage increases. They had attended earlier stewards meetings and knew the purpose of those meetings. Yet they elected to disregard established procedures and to present wage complaints at a meeting attended by stewards who are not employed by the Union, to the potential embarrassment of the Union and its leader who was conducting the meeting. Nonetheless, the Union leader met with them the next morning and told them they would be given a raise when their work indicated they deserved it. Six days later they again disregarded established procedures and passed out wage complaint letters to the board members at the Pilandic luncheon, again to the potential embarrassment of the Union.

The court found that Jackson and Gilmer were discharged for failing to follow "established, proper, and known procedures" in presenting their wage complaints and because they had "poor prior work records" (*ibid.*), and concluded that "[w]hen the entire panorama of events, not

just the goals expressed, is viewed, it is clear that those events constituted adequate and justifiable grounds for the present dismissals" (*ibid.*).

3. The petition presents the question whether employees may be deprived of the protection of Section 7 of the National Labor Relations Act, 29 U.S. 157, because their wage complaints arguably were lodged in an inappropriate fashion. The Board agrees with petitioners that the court of appeals erred in concluding that the manner in which they presented their complaints was so egregious as to remove their conduct from Section 7's protection. The Board did not, however, file its own petition because in its view the question presented turns on the particular facts of this case. Accordingly, the judgment below is not one which this Court ordinarily would review. *Universal Camera Corp.* v. *NLRB*, 340 U.S. 474, 490-491 (1951).

Should the petition be granted, the Board will defend its decision and order.

Respectfully submitted.

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